

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE**

DAVID MCKINNEY, individually,)
ANITA MCKINNEY, individually, h/w) C.A. NO.
)
Plaintiffs,)
)
vs.)
)
PAUL J. MELINARI, individually and)
FINANCIAL SERVICE VEHICLE TRUST,)
a foreign corporation)
)
Defendants.)

COMPLAINT

Plaintiffs, David McKinney and Anita McKinney, through their counsel, David P. Cline, Esquire, say by way of Complaint that:

JURISDICTION

I. JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP

1. Jurisdiction is based on diversity of citizenship and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.
2. Jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332.

VENUE

3. Venue lies under 28 U.S.C. Section 1391.

PARTIES

4. Plaintiff, David McKinney, is and was at all times pertinent hereto a resident of the state of Delaware, residing at 101 Wedgefield Drive, Wilmington, DE 19720.

5. Plaintiff, Anita McKinney, is and was at all times pertinent hereto a resident of the state of Delaware, residing at 101 Wedgefield Drive, Wilmington, DE 19720.

6. Defendant, Financial Service Vehicle Trust, on information and belief is an Ohio corporation with its place of business located at 5515 Park Center Circle, Dublin, Ohio, 43017

7. Defendant, Paul J. Melinari, on information and belief is a resident of New Jersey, residing at 6 Butler Court, Medford, NJ 08055,

COUNT I AGENCY

8. Defendant, Paul J. Melinari, was, at all times pertinent hereto, an employee of Financial Service Vehicle Trust, acting in the normal course and scope of his employment.

9. At all times herein, defendant, Paul J. Melinari was acting as an agent, servant, and employee of defendant, Financial Service Vehicle Trust. Defendant, Financial Service Vehicle Trust, is thus liable as the principle, master, and employer of defendant, Paul J. Melinari.

COUNT II FACTS OF ACCIDENT

10. On or about July 31, 2004 at approximately 11:56 a.m., plaintiff, David McKinney was driving his motor vehicle, a 2002, Blue Dodge Caravan, traveling west bound on US 40, in Pilesgrove, NJ. Plaintiff, Anita McKinney was at all times pertinent hereto a passenger in David McKinney's vehicle.

11. At the same time and place defendant, Paul J. Melinari, was operating a 2004, black BMW 745, when he struck the back of the plaintiff's vehicle, which was lawfully stopped on westbound US 40, Pilesgrove, NJ.

12. The collision was caused by the negligence of defendant, Paul J Melinari, and said negligence is imputed to defendant, Financial Service Vehicle Trust, Respondent Superior in that:

a. He operated his vehicle in a careless and imprudent manner without due regard for and traffic conditions then existing.

b. He operated his vehicle failing to give full time and attention thereto and failing to maintain a proper lookout.

WHEREFORE, Plaintiffs, David McKinney and Anita McKinney, demands judgment against defendants, Paul J. Melinari and Financial Service Vehicle Trust for monetary damages, property damages and suffering, lost wages, attorney fees and costs of suit.

COUNT III ANITA MCKINNEY

13. As a direct and proximate result of the negligence aforesaid, plaintiff, Anita McKinney suffered injuries including, but not limited to cervical strain, left trapezius muscle strain, tendonitis left shoulder, pain down left leg, back pain, and numbness and tingling in lower extremity.

14. As a further result of the negligence aforesaid, plaintiff, Anita McKinney has incurred medical and travel expenses which said expenses may continue into the indefinite future.

15. As a further result of the injuries mentioned above, plaintiff, Anita McKinney, has sustained a loss of earnings and/or earnings capacity, which may continue into the indefinite future.

COUNT IV DAVID MCKINNEY

16. As a direct and proximate result of the negligence aforesaid, plaintiff, David McKinney, suffered serious and potentially permanent injuries including, but not limited to chronic cervical spine pain secondary to sprain and strain along with disc herniation noted at C5-C6, carpal tunnel symptomatology, nerve damages, and headaches.

17. As a further result of the negligence aforesaid, plaintiff, David McKinney has incurred medical and travel expenses which said expenses may continue into the indefinite future.

18. As a further result of the injuries mentioned above, plaintiff, David McKinney, has sustained a loss of earnings and/or earnings capacity, which may continue into the indefinite future.

COUNT V CONSORTIUM

19. As a further result of the negligence of the defendants, Financial Service Vehicle Trust and Paul J. Melinari, the plaintiff, David McKinney, has suffered the loss of society, aid, comfort, companionship, and consortium of his wife, plaintiff, Anita McKinney.

20. As a further result of the negligence of the defendants, Financial Service Vehicle Trust and Paul J. Melinari, the plaintiff, Anita McKinney, has suffered the loss of society, aid, comfort, companionship, and consortium of her husband, plaintiff, David McKinney.

WHEREFORE, Plaintiffs, David McKinney and Anita McKinney, demand judgment against defendants, Paul J. Melinari and Financial Service Vehicle Trust for monetary damages, property damages, pain and suffering, lost wages, attorney fees and costs of suit.

DAVID P. CLINE, P.A.

BY: /s/ David P. Cline
David P. Cline, Esq. (#2681)
1300 N. Market St., Ste. 700
Wilmington, DE 19801
(302) 529-7848
Attorney for Plaintiff(s)

Dated: March 30, 2006

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <i>David McKinney Anita McKinney</i>		DEFENDANTS <i>Pavil J. Melinari and Financial Services Vehicle Trust</i> County of Residence of First Listed Defendant <u>New Castle</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	
(b) County of Residence of First Listed Plaintiff <u>New Castle</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>		County of Residence of First Listed Defendant <u>Camden, NJ and out-of-state</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>	
(c) Attorney's (Firm Name, Address, and Telephone Number) <i>David P. Cline, Esquire 1300 North Market Street, Suite 700 Wilmington, DE 19801 (302) 529-7848</i>		Attorneys (If Known)	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff		<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	
<input type="checkbox"/> 2 U.S. Government Defendant		<input checked="" type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>	
		Citizen of This State <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4
		Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input checked="" type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)		Appeal to District Judge from Magistrate Judgment				
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7

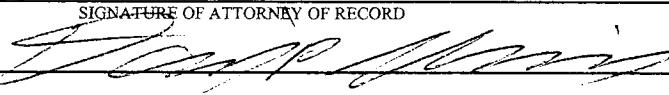
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

VI. CAUSE OF ACTION		Brief description of cause: <i>Personal Injury Auto</i>				
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VII. REQUESTED IN COMPLAINT: IF ANY	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER F.R.C.P. 23</small>	DEMANDS	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
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VIII. RELATED CASE(S) IF ANY	<small>(See instructions):</small>	JUDGE	DOCKET NUMBER			
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DATE	SIGNATURE OF ATTORNEY OF RECORD				
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<u>27 March 2006</u>						
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FOR OFFICE USE ONLY					
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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No.

86 208

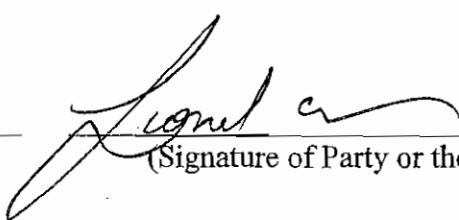
ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

3-30-06

(Date forms issued)



(Signature of Party or their Representative)

Lionel A. Moore

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action